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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203263

DATE: July 7, 1981

MATTER OF: The Nedlog Company

DIGEST:

1. [Protest concerning bidder's ability to meet contractual requirements] is not for consideration as GAO will not review affirmative determination of responsibility in absence of showing of fraud or allegation that definitive responsibility criteria in solicitation were misapplied.
2. Protest based on specification defects is untimely when filed after bid opening.
3. Allegation that subsidiary of foreign corporation should have been disqualified for award because it represented that the "foreign content" of its offer was "zero" is summarily denied because protester has not shown that item offered was manufactured abroad wholly or in part.

The Nedlog Company protests the award of a contract to Douwe Egberts Superior Tea and Coffee Company under invitation for bids (IFB) DABT35-81-B-0046 issued by the U.S. Army Training Center and Fort Dix (Army), Fort Dix, New Jersey. Essentially, Nedlog alleges that Douwe Egberts is not capable of meeting the sanitation requirements incorporated in the contract and that the specifications concerning non-pressurized quick mix beverage proportioning and dispensing systems were inadequate.

Nedlog contends that the evaluations of the proposed equipment were subjective and that the contracting officer failed to examine Douwe Egberts' equipment to determine whether or not it complied with the specifications. The Army, however, determined Douwe Egberts to be a responsible bidder, capable of performing the contract.

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Whether Douwe Egberts has the ability to perform the contract is a matter of the firm's responsibility, which must be determined in the affirmative by the contracting officer prior to award. Our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of the procuring official is shown or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Toloco Industries, Ltd., B-202984, May 6, 1981, 81-1 CPD 358. Neither of these circumstances is present here. Consequently, we will not review the protest as to responsibility.

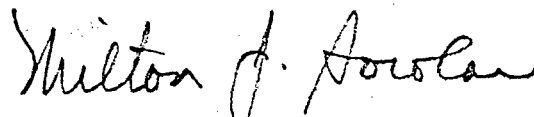
Nedlog also alleges that the IFB specifications for non-pressurized quick mix proportioning and dispensing systems are not clear or adequately described. It adds that the Army failed to require compliance with allegedly required sanitation standards set by Army Regulation 40-5; the National Sanitation Foundation; the Federal Food, Drug and Cosmetic Act and regulations promulgated thereunder; and the Army Food Service. As to the adequacy of the specifications, our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), require that protests based upon alleged improprieties apparent from the face of an invitation for bids must be filed prior to bid opening. Since bid opening was March 12, 1981 and the protest based on specification defects was filed May 11, the protest is untimely and will not be considered on the merits.

Finally, the protester asserts that Douwe Egberts should have been disqualified for award because it misrepresented its corporate ownership. Nedlog states that Douwe Egbert's certification in its bid that the "foreign content" of its offer was "zero" was inconsistent with the fact that Douwe Egberts is a wholly-owned subsidiary of a Dutch corporation.

In order to supply certain trade data required by the Procurement Management Reporting System, the contracting officer must enter on a report form "the percent of the

contract award price that represents the foreign content of the item or service acquired." Defense Acquisition Regulation (DAR) § 21-131(b) (DAC No. 76-26, December 15, 1980); see also DAR F-200.350, which contains the Department of Defense Form 350, "Individual Procurement Action Report" (October 1, 1980 ed.), Item 22.B., "Percent of Foreign Content."

The "percent of foreign content" relates to the place of manufacture of the item purchased, not to the nationality or corporate affiliations of a bidder. Therefore, it is not inconsistent for a foreign-owned corporation to indicate its product has "zero" foreign content if it is manufactured domestically. Nedlog has not shown that Douwe Egberts' product is manufactured wholly or in part abroad. Therefore, we cannot agree that Douwe Egberts should have been disqualified from award for misrepresenting itself and this contention is summarily denied.



Acting Comptroller General
of the United States